IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	
Watson, et al.	
	Examiner: Kieu-oahn T. Bui
Application No.: 10/632,003	Art Unit: 2623
Filed: July 30, 2003	Confirmation No: 2312
For: SYSTEM FOR DELIVERY AND DYNAMIC PRESENTATION OF LARGE MEDIA ASSETS OVER BANDWIDTH CONSTRAINED NETWORKS	

APPEAL BRIEF

COMMISSIONER FOR PATENTS
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Dear Sir:

This Appeal Brief is submitted in connection with the Notice of Appeal submitted on August 6, 2007.

REAL PARTY-IN-INTEREST

The real party-in-interest is Disney Enterprises, Inc., assignee of the above-identified patent application.

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RELATED APPEALS AND INTERFERENCES

U.S. Patent Application No. 10/646,192, which is commonly owned with the present application, is currently on Appeal to the Board. The present application and the '192 application cross-reference each other. Furthermore, the provisional applications to which each claims priority are also cross-referenced. No decision has been reached in that Appeal.

STATUS OF CLAIMS

Claims 1-47 are pending. Claims 48-106 were previously cancelled in response to a constructive restriction requirement.

STATUS OF AMENDMENTS

There are no outstanding amendments to the claims. Claims 1-47 were amended earlier during prosecution and the Examiner entered those amendments.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed at "A method for delivering an asset over a network comprising: supplying an asset list over said network to a user device, said user device including a client process; and delivering said asset over said network to said user device if a predetermined constraint is satisfied," see specification paragraphs [0034] to [0039], paragraph [0055], paragraph [0061], and/or Figs. 1 and/or 2, for example.

Claim 13 is directed towards "A method for presenting to a user content over a network, the method comprising: supplying an asset list over said network to a client process, said client process

operating in a user device; delivering an asset, from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location; and integrating the delivered asset with a content stream being received by said user device from said remote location over said network," see specification paragraphs [0034] to [0039], paragraph [0055], paragraph [0061], and/or Figs. 1 and/or 2, for example.

Claim 26 is directed towards "A system for presenting content over a network, the system comprising: an asset list capable of being made available by a content provider over the internet to a client process, said client process capable of operating in a user; an asset, made available from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location," see specification paragraphs [0034] to [0039], paragraph [0055], paragraph [0061], and/or Figs. 1 and/or 2, for example.

Claim 43 is directed towards "A method for presenting a stream of content over a network, the method comprising: supplying an asset list by a content provider over said network to a client process, said client process operating on a user device; delivering an asset, from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location; and integrating the delivered asset with a content stream being received by said user device from said remote location over said network; wherein said asset and said content stream a represented," see specification paragraphs [0034] to [0039], paragraph [0055], paragraph [0061], and/or Figs. 1 and/or 2, for example.

Claim 44 is directed towards "A system for presenting content over a network the system comprising: an asset list to be made available by a content provider over said network to a client process,

said client process capable of operating in a user device; an asset, to be made available from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location; and an integrator tool for integrating said asset with a content stream being capable of received by said user device from said remote location over said network, wherein said predetermined constraint comprises at least one of at least one of said user device being idle, a bandwidth usage of said network being below a operating level, a time of day, a CPU usage or memory usage of said user device being below operating levels," see specification paragraphs [0034] to [0039], paragraph [0055], paragraph [0061], and/or Figs. 1 and/or 2, for example.

Claim 45 is directed towards "A method for receiving an asset over a network comprising: receiving an asset list provided by a content provider over said network at a client, said client operating in a user device; and receiving said asset, corresponding to at least a portion of said asset list, over said network at user device if a predetermined constraint is satisfied; wherein said predetermined constraint comprises at least one of said user device being idle, a network Quality of Service (QOS), a network bandwidth usage being below an operating level, a CPU usage or memory usage of said user device being below operating levels," see specification paragraphs [0034] to [0039], paragraph [0055], paragraph [0061], and/or Figs. 1 and/or 2, for example.

Claim 46 is directed towards "A method for providing a home media library to a user over a network, the method comprising: supplying an asset list by a content provider over said network to a set-top box, said set-top box comprising a client process capable of managing delivery of assets; and delivering an asset, from a remote location, over said network to said set-top box if a predetermined constraint is satisfied, as indicated by said client process wherein said asset list comprises at least an indication of said remote location," see specification paragraphs [0034] to [0039], paragraph [0055],

paragraph [0061], paragraph [0076] to [0078] and/or Figs. 1 and/or 2, for example.

Claim 47 is directed towards "A method of receiving media assets at a set-top box for storage and subsequent viewing, the method comprising: receiving a media asset list from a content provider on said set top box, said media asset list comprising a list of media assets to be downloaded and information about the location of the media assets; running a client process on said set top box, wherein said client process is capable of reading said media asset list to determine what media assets to transfer to the set top box, and wherein said client process is further capable of managing delivery of digital media assets based at least in part on predetermined constraints; downloading digital media assets from said content provider to said set top box if said predetermined constraints are satisfied; and storing the downloaded digital media assets on said set top box for subsequent viewing on a television or other display device," see specification paragraphs [0034] to [0039], paragraph [0055], paragraph [0061], paragraph [0076] to [0078] and/or Figs. 1 and/or 2, for example.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-47 stand rejected under 35 USC § 102(e) as being anticipated by U.S. patent publication no. No. 2002/0059425 of Belfiore et al., now U.S. Patent No. 6,990,513 (hereinafter, Belfiore).

ARGUMENT

1. BELFIORE DOES NOT SHOW OR DISCLOSE EITHER "SUPPLYING AN ASSET LIST OVER SAID NETWORK TO A USER DEVICE, SAID USER DEVICE INCLUDING A CLIENT PROCESS" OR "DELIVERING SAID ASSET OVER SAID NETWORK TO SAID USER DEVICE IF A PREDETERMINED CONSTRAINT IS SATISFIED;" THEREFORE, BELFIORE CANNOT ANTICIPATE THE REJECTED CLAIMS

As is well-established, to make a proper *prima facie* rejection under 35 USC 102, the Examiner must provide a prior art document that shows each and every element and limitation of the rejected claim or claims. If even a single limitation is not present in the applied document, then the Examiner has failed to make a proper rejection under 35 USC 102. Here, it is asserted that, in fact, there is more than one limitation from the rejected claims that is completely absent from Belfiore and, therefore, Belfiore cannot anticipate the rejected claims.

Here, to set the context of this examination for the Board, Assignee believes, based on a careful review of Belfiore and a careful review of the present patent application, that Belfiore does not even relate to the subject matter recited in claim 1. Furthermore, when Assignee continues to make this point in a good faith attempt to "join issue" with the Examiner regarding the basis for disagreement, rather than respond on the merits and address Assignee's substantive points, the Examiner instead inappropriately asserts that Assignee has not complied with 37 CFR 1.111. See, for example, Final Office Action, dated February 8, 2007, pages 2-3, paragraph 2. Nonetheless, despite several attempts to appreciate the Examiner's substantive position, Assignee continues to remain extremely puzzled as to why Belfiore is being cited by the Examiner as anticipatory of claim 1.

To more concretely illustrate this point, Belfiore, at paragraphs 0016 to 0018, as simply one example, states the following:

> [0016] The distributed computing services platform of the present invention facilitates communication between client devices and a server federation, and between servers within a server federation. The server federation may be comprised of, for example, servers and services on the Internet and/or a corporate intranet. The clients and servers, while maintaining some degree of autonomy, are integrated through meaningful communication and information exchange. This meaningful exchange is enabled by exchanging information through common schema across a transport-independent messaging infrastructure.
>
> [0017] The platform comprises a number of distributed yet integrated technology components and services, including programming model, schema, user interface, events, messaging, storage, directory, security, and code management. The programming model defines a structure for an application that can be flexibly distributed between the client and the server federation. An application that follows the programming model includes page, emissary, and fiefdom components. The page component hosts controls typically used to project a user interface for the specific client device in communication with the server federation. The emissary component generically represents the client to the server federation. The fiefdom component owns the data that constitutes the primary resource of the application. These components generally communicate with each other through asynchronous messaging. The messages may be generated by logic internal to a component, by events generated internal to the component, or in response to messages received from other components.
>
> [0018] The platform relies on schema to make communication meaningful. Schema is a set of rules or standards that define how a particular type of data can be structured. Thus, the federation's computer systems use schema to recognize that data conforming to a particular structure represents an item of a particular type used throughout the federation. Thus, the meaning of data, rather than just the data itself, may be communicated between computer systems. For example, a computer device may recognize that a data structure that follows a particular address schema represents an address, enabling the computer to "understand" the component part of an address. The computer device may then perform intelligent actions based on the understanding that the data structure represents an address. Such actions may include, for example, the presentation of an action menu to the user that represents things to do with addresses. Schemas may be stored locally on a device and/or globally in the federation's "mega-store." A device can keep a locally stored schema updated by subscribing to an event notification service (in this case, a schema update service) that automatically passes messages to the device when the schema is updated. Access to globally stored schemas is controlled by the security infrastructure. (emphasis supplied)

As should be clear from the above passage, Belfiore is focused on addressing technical issues surrounding a "distributed computing services platform." Therefore, Assignee is unable to comprehend

how such a distributed computing services platform relates to the subject matter of the present application, much less could be anticipatory of claimed subject matter.

To illustrate this point further and be more specific at the same time, rejected claim 1 recites: "A method for delivering an asset over a network comprising: supplying an asset list over said network to a user device, said user device including a client process; and delivering said asset over said network to said user device if a predetermined constraint is satisfied." The Examiner, however, rejects claim 1 under section 102 relying on Belfiore. Therefore, among other things, the Examiner takes the position that Belfiore shows or discloses the claim language "supplying an asset list over said network to a user device, said user device including a client process," as recited by claim 1.

However, it is Assignee's position that the Examiner is incorrect and that Belfiore does not disclose "supplying an asset list over said network to a user device, said user device including a client process." For example, the specification of the present application indicates that the term "assets" refers to digital media, such as audio, video, games, etc. For example, at paragraph [005], the specification *expressly* states: "In particular, delivering large media assets--whether they be audio, video, flash, games, data or other digital media formats--often requires more network bandwidth/throughput than is available." This point was emphasized to the Examiner by the Assignee so that the Examiner could see the significant differences between the technology of the present application and the technology of a distributed computing services platform, such as described in Belfiore. However, the Examiner's response to this point as far as Assignee is able to discern it, is that the Assignee is somehow attempting to read limitations from the specification into the claims. See, for example, item 11 of the Examiner's Advisory Action, dated May 15, 2007. Likewise, yet again, the Examiner again asserts that 37 CFR 1.111(c) has not been met, see item 11 of the Examiner's Advisory Action, dated May 15, 2007;

however, it is difficult for the Assignee to understand why the Examiner makes such an assertion when specific claim limitations that are missing from Belfiore have been discussed by the Assignee in several responses. It appears to the Assignee as if it has "...clearly point[ed] out the patentable novelty which he or she things the claims present in view of the state of the art disclosed by the references cited ..." and, therefore, has fully complied with the requirements of 1.111(c).

An aspect of the fundamental disagreement between the Examiner and the Assignee appears to related in some way to the Examiner's contention that the claim limitation "supplying an asset list over said network to a user device, said user device including a client process" is shown or disclosed in Belfiore by paragraphs [0123] to [0126] of Belfiore. As previously expressed in responses to the Examiner's office action rejections, Assignee continues to respectfully disagree with the Examiner's position and, quite sincerely, continues to be puzzled by the assertion.

Immediately above, Assignee quoted language from the specification of the present application that expressly indicates meaning of "assets." However, the portions of Belfiore cited by the Examiner, e.g., paragraphs [0123] to [0126], do not appear to show or describe what the specification of the present application is referring to. Instead, Belfiore describes in those paragraphs aspects of the technology for a distributed computing platform. For example, those paragraphs of Belfiore discuss a system wherein "[c]onsumers of events, such as, by way of example, event store 622, perform inferences 624 from sets of low-level (atomic events 606) or higher level events 612 and take actions based on these inferences. The inferences 624 can range from the simple retransmission of the information to logical, Bayesian, and decision-theoretic inferences." It is clear from this description that Belfiore cannot be referring to "supplying an asset list over [a] network to a user device..." and, instead, is referring events, inferences and actions that relate to the components of a distributed computing system platform. Therefore,

Belfiore cannot anticipate claim 1 at least because the document does not show "supplying an asset list over said network to a user device, said user device including a client process," as recited by Assignee's claim 1. For at least this reason, then, Assignee respectfully requests that the Board remand this case with instructions that this rejection be reversed.

It is also Assignee's position that Belfiore does not show yet another claim limitation of claim 1: "delivering said asset over said network to said user device if a predetermined constraint is satisfied," as recited by Assignee's claim 1. As with the claim limitation just discussed, the Examiner also maintains that this limitation is shown or described in Belfiore. Assignee, again, disagrees.

For this particular limitation of claim, the Examiner specifically points to paragraphs [0127] and [0128] of Belfiore. However, as Assignee believes has already been made clear, Belfiore does not relate at all to electronically delivering an asset. Therefore, as was shown above for the previous claim limitation, Belfiore cannot anticipate claim 1 because it also does not show or describe this particular claim limitation. The paragraphs pointed to by the Examiner, instead, state that "[e]vent schema is a collection of class descriptions and the relationships among these classes that define physical event structure" and that "[g]iven this structure, the pattern language is able to use both instance data and schema information in order to capture higher-level semantics and rules with which to create derivative events." Again, if it was not already clear, this quote from Belfiore amply demonstrates that it is directed towards a "platform compris[ing] a number of distributed yet integrated technology components and services, including programming model, schema, user interface, events, messaging, storage, directory, security, and code management. The programming model defines a structure for an application that can be flexibly distributed between the client and the server federation." Belifore paragraph [0017]. However, this simply does not show or suggest "delivering said asset over said network to said user

device if a predetermined constraint is satisfied," as recited by Assignee's claim 1. Assignee, thus, again, respectfully asserts that Belfiore does not show or suggest the above noted aspects of Assignee's claimed subject matter. For this additional reason as well, Assignee respectfully requests that the Board remand this case with instructions that this rejection be reversed.

Assignee would like to again emphasize that Belfiore cannot be directed to the problem addressed by Assignee's claimed subject matter, given the apparent and significant differences between the subject matter of Belfiore and Assignee's claimed subject matter. For example, Belfiore states that "the present invention, [ ] is a distributed computing platform that facilitates more Internet-based collaboration and more inter-Web site communication." See Belfiore, paragraph [00015], lines 2-4. It is respectfully asserted that the Examiner has apparently misconstrued Belfiore and/or Assignee's claimed subject matter and, as a result, Belfiore cannot and does not anticipate Assignee's claimed subject matter under 35 USC § 102(e). Again, it is therefore requested that the Board remand this cases with instructions to reverse the rejection of the claims.

To further demonstrate the significant gap between the subject matter of Belfiore and the claimed subject matter of the present application, it may be useful to discuss some illustrative examples from the present application. Assignee, of course, would first like to also point out that it recognizes that claimed subject matter is not necessarily limited in scope to subject matter disclosed in the specification. Nonetheless, with this qualification in mind, some an exercise in this circumstance may nonetheless be instructive to highlight differences between the subject matter. For example, as discussed above, Belfiore relates to a distributed services computing platform. Assignee's claimed subject matter, on the other hand, relates to delivering media assets over a network and not to a particular software

development platform. For example, solely for the purpose of illustrating the differences, the present application states the following:

> [0005] The inventors have recognized that even with advances in network technologies, delivering rich, high quality experiences will remain a challenge. In particular, delivering large media assets--whether they be audio, video, flash, games, data or other digital media formats--often requires more network bandwidth/throughput than is available. For instance, in the case of audio and video, a high bit rate asset can only be delivered in real time if a user's effective bandwidth is at least equal to the asset's bit rate, otherwise the result is a sub-optimal user experience complete with stutters, stops, and content buffering.
>
> [0006] On the other hand, a large game executable may not have the same real time constraints (or required quality of service) as a video, however downloading the asset requires a significant amount of time and overhead for the user, even on the fastest networks. While a number of "download managers" on the market will take care of this for the user, a content provider may wish to intelligently and adaptively manage the download of assets to the user device (e.g., a computer, a set-top box with memory and/or processor, a device) in an elegant and transparent manner, without needing the attention of the user.
>
> [0007] Given this, there is a need to manage and deliver large, high quality media assets to users using their limited bandwidth in a time shifted manner. That is, there is a need to be able to unobtrusively deliver content to users via available bandwidth and idle cycles, so that when the high quality content is needed, it is readily available on demand and an uncompromised user experience is rendered. This in turn provides the illusion that the user has more effective bandwidth than is actually available. To this end there is also a need for this technology to integrate seamlessly into delivery and presentation platforms (including but not limited to web browsers, flash and other platforms) and content publishing systems. The present invention achieves this and other functionalities and also overcomes the limitations of the prior art.

As should be evident from the above passage, Assignee's patent application is directed to solving technical issues that are significantly different from the technical issues addressed in Belfiore. Likewise, the present application also states that "[a]n asset list comprises information related to the media assets to be downloaded to the client device. ... [i]n one implementation, the assets included in the cache are dictated by an asset list provided by a content provider. ... [a] client is allowed to be associated with more than one asset list, so that many service providers or multiple business units of one service provider can separately maintain their own asset lists and make use of the same client to manage the

downloads." Again, it is noted that claimed subject matter is not limited to the examples provided. However, even with that qualification, the technologies here are so significantly different that Assignee continues to maintains that Belfiore in no way anticipates, discloses, shows, teaches or even remotely suggests Assignee's claimed subject matter. Accordingly, Assignee again requests that the Board remand this case with instructions to reverse the rejection of the claims below.

2. BELFIORE DOES NOT EVEN *INHERENTLY* SHOW OR SUGGEST ASSIGNEE'S CLAIMED SUBJECT MATTER, MUCH LESS EXPRESSLY DO SO

During prosecution of the present application, the Examiner contended that because " the prior art structure is capable of performing the intended use, ...it meets the claim." See Final Office Action, dated February 8, 2007, page 3. Assignee respectfully asserts that the Examiner is incorrect in contending that the structure in the applied document is capable of performing the intended use without modification. It appears that the Examiner is asserting the applied document ***inherently*** shows Assignee's claimed subject matter. However, the Examiner has failed to meet the legal and factual requirements necessary to successfully make an assertion of inherency.

As is well-settled law, to establish inherency, "extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." (emphasis supplied) In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). See also MPEP § 2163.07(a). More recently, the Federal Circuit has stated that to establish *inherent anticipation*, it must be shown that "the disclosure [of the applied document] is sufficient to show that the natural result flowing from the operation as taught [in the applied document] would result in the claimed [subject matter]." SmithKline Beecham Corp. v. Apotex Corp., 403 F3d 1331, 1343 (Fed. Cir. 2005). The Examiner, however, has failed to show that the natural result flowing from the disclosure in Belfiore would provide Assignee's claimed subject matter. This is because, in fact, the natural result flowing from any aspect of Belfiore could not provide Assignee's claimed subject matter.

Specifically, Belfiore shows a "platform [that] comprises a number of distributed yet integrated technology components and services, including programming model, schema, user interface, events, messaging, storage, directory, security, and code management. The programming model defines a structure for an application that can be flexibly distributed between the client and the server federation." Belfiore, paragraph [0017]. Thus, any attempt to modify the disclosure from Belfiore to achieve Assignee's claimed subject matter, even assuming that were possible, would require *extensive* work and *extensive* experimentation. As has already been discussed above, Belfiore merely shows a programming model useful for providing a distributed computing services platform. Belfiore does not show or suggest any aspect of a system of delivery and/or dynamic presentation of large media assets over bandwidth constrained networks. Therefore, one would be hard pressed to even *imagine* how Belfiore could be successfully modified to provide the subject matter claimed by the present application.

Again, for at least the reasons previously discussed, Assignee respectfully requests that the Board remand claims 1- 47 with the instructions that the previous rejections be reversed. Rather, Assignee believes the pending claims are in condition for allowance and requests that the Board, thought this action, permit these claims to proceed to issuance.

CONCLUSION

In view of the foregoing, it is respectfully requested that the Board remand this case with instructions that the rejection of the claims that took place below be reversed.

Respectfully submitted,

Dated: 11/6/07

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CLAIM APPENDIX

1. (Previously presented) A method for delivering an asset over a network comprising:

supplying an asset list over said network to a user device, said user device including a client process; and

delivering said asset over said network to said user device if a predetermined constraint is satisfied.

2. (Previously presented) The method according to claim 1, wherein said asset comprises at least one of an audio content, a video content, a text content, a right to use license or a multimedia file.

3. (Previously presented) The method according to claim 1, wherein said asset list is generated at least in part in response to a request from said user device.

4. (Previously presented) The method according to claim 1, and further comprising accessing a content web site of a content provider.

5. (Previously presented) The method according to claim 1, wherein said predetermined constraint comprises at least one of said user device being idle, a network Quality of Service (QOS) of said network, or the bandwidth usage being below a predetermined operating level.

6. (Previously presented) The method according to claim 1, wherein said predetermined constraint comprises at least one of said user device CPU usage, or memory usage in said user device being below predetermined operating levels.

7. (Previously presented) The method according to claim 1, wherein said client initiates the delivery of the asset, from said content provider, over said network to said user device.

8. (Previously presented) The method according to claim 1, wherein said asset is stored on a local cache.

9. (Previously presented) The method according to claim 8, and further comprising presenting the stored asset in conjunction with real time content, said real time content provided by said content provider.

10. (Previously presented) The method according to claim 1, wherein said predetermined constraint comprises a time of day.

11. (Previously presented) The method according to claim 8, and further comprising determining at least one parameter from CPU usage of said user device, a bandwidth usage, a local cache usage, or a user device activity timer.

12. (Previously presented) The method according to claim 8, and further comprising presenting a substitute asset in conjunction with real time content from said content provider, if said asset is unavailable at said user device.

13. (Previously presented) A method for presenting to a user content over a network, the method comprising:

supplying an asset list over said network to a client process, said client process operating in a user device;

delivering an asset, from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location;

and integrating the delivered asset with a content stream being received by said user device from said remote location over said network.

14. (Previously presented) The method according to claim 13, wherein said asset comprises at least one of an audio content, a binary data content, a video content, a right to use license, a text content, or a multimedia file.

15. (Previously presented) The method according to claim 13, wherein said asset list is provided by a content provider to said client process.

16. (Previously presented) The method according to claim 13, and further comprising accessing a content web site of a content provider.

17. (Previously presented) The method according to claim 13, wherein said predetermined constraint comprises at least one of said user device being idle, a network Quality of Service (QOS), or a bandwidth usage being below an operating level.

18. (Previously presented) The method according to claim 13, wherein said predetermined constraint comprises at least one of a CPU usage for said user device, or a memory usage of said user device being below an operating level.

19. (Previously presented) The method according to claim 13, wherein said client process initiates the delivery of said asset, from a content provider, over said network to said user device.

20. (Previously presented) The method according to claim 13, wherein said asset is stored on a local cache.

21. (Previously presented) The method according to claim 20, and further comprising presenting the stored asset in conjunction with real time content, said real time content provided by a content provider.

22. (Previously presented) The method according to claim 13, wherein said predetermined constraint comprises a time of day.

23. (Previously presented) The method according to claim 20, and further comprising determining at least one parameter from a CPU usage of said user device, a bandwidth usage, a usage of said local cache, or a user device activity timer.

24. (Previously presented) The method according to claim 20, and further comprising presenting a substitute asset in conjunction with real time content from a content provider, if said asset is unavailable at said user device.

25. (Previously presented) The method according to claim 13, wherein said asset list is delivered to said client process by a content provider.

26. (Previously presented) A system for presenting content over a network, the system comprising:

an asset list capable of being made available by a content provider over the internet to a client process, said client process capable of operating in a user ;

an asset, made available from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location.

27. (Previously presented) The system according to claim 26, and further comprising an integrator tool for integrating a delivered asset with a content stream being received by said user device from said remote location over said network.

28. (Previously presented) The system according to claim 26, wherein said asset comprises at least one of an audio content, a video content, a binary data content, a text content, or a multimedia file.

29. (Previously presented) The system according to claim 26, wherein said asset list is to be provided to said client process by said content provider.

30. (Previously presented) The system according to claim 26, wherein said client process is capable of accessing a content web site of said content provider.

31. (Previously presented) The system according to claim 26, wherein said asset is to be made available if said predetermined constraint comprises at least one of said user device being idle, or a bandwidth usage being below an operating level.

32. (Previously presented) The system according to claim 26, wherein said asset is to be made available

if said predetermined constraint comprises a CPU usage of said user device, or a memory usage of said user device being below an operating level.

33. (Previously presented) The system according to claim 26, wherein said client process is capable of initiating delivery of said asset, from said content provider, over said network to said user device.

34. (Previously presented) The system according to claim 26, wherein said asset is to be stored on a local cache.

35. (Previously presented) The system according to claim 34, and further comprising means for presenting the stored asset in conjunction with real time content, said real time content provided by said content provider.

36. (Previously presented) The system according to claim 26, wherein said asset is to be made available if said predetermined constraint comprises time of day.

37. (Previously presented) The system according to claim 34, and further comprising means for determining at least one parameter from a CPU usage of said user device, a bandwidth usage, a local cache usage, or a user device activity timer.

38. (Previously presented) The system according to claim 34, and further comprising means for presenting a substitute asset in conjunction with real time content from said content provider, if said asset is unavailable at said user device.

39. (Previously presented) The system according to claim 26, wherein said asset list is capable of being updated periodically by said content provider.

40. (Previously presented) The system according to claim 26, wherein said client process is capable of being associated with a plurality of asset lists.

41. (Previously presented) The system according to claim 26, wherein said asset list comprises at least one of an expiration date, a callback URL, a client side token, a throttle parameter, a refresh rate parameter, a delete asset flag, a help link, or resource path information.

42. (Previously presented) The system according to claim 26, wherein said asset is capable of being delivered to at least one of a cable provider or an internet service provider before delivery of said asset to said user device, said cable and internet service provider being in geographical proximity to said user device.

43. (Previously presented) A method for presenting a stream of content over a network, the method comprising:

supplying an asset list by a content provider over said network to a client process, said client process operating on a user device;

delivering an asset, from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location; and

integrating the delivered asset with a content stream being received by said user device from said remote location over said network; wherein said asset and said content stream a represented.

44. (Previously presented) A system for presenting content over a network the system comprising:

an asset list to be made available by a content provider over said network to a client process, said client process capable of operating in a user device;

an asset, to be made available from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location; and

an integrator tool for integrating said asset with a content stream being capable of received by said user device from said remote location over said network, wherein said predetermined constraint comprises at least one of at least one of said user device being idle, a bandwidth usage of said network being below a operating level, a time of day, a CPU usage or memory usage of said user device being below operating levels.

45. (Previously presented) A method for receiving an asset over a network comprising:

receiving an asset list provided by a content provider over said network at a client, said client operating in a user device; and

receiving said asset, corresponding to at least a portion of said asset list, over said network at user device if a predetermined constraint is satisfied; wherein said predetermined constraint comprises at least one of said user device being idle, a network Quality of Service (QOS), a network bandwidth usage being below an operating level, a CPU usage or memory usage of said user device being below operating levels.

46. (Previously presented) A method for providing a home media library to a user over a network, the method comprising:

supplying an asset list by a content provider over said network to a set-top box, said set-top box comprising a client process capable of managing delivery of assets; and

delivering an asset, from a remote location, over said network to said set-top box if a predetermined constraint is satisfied, as indicated by said client process wherein said asset list comprises at least an indication of said remote location.

47. (Previously presented) A method of receiving media assets at a set-top box for storage and subsequent viewing, the method comprising:

receiving a media asset list from a content provider on said set top box, said media asset list comprising a list of media assets to be downloaded and information about the location of the media assets;

running a client process on said set top box, wherein said client process is capable of reading said media asset list to determine what media assets to transfer to the set top box, and wherein said client process is further capable of managing delivery of digital media assets based at least in part on predetermined constraints;

downloading digital media assets from said content provider to said set top box if said predetermined constraints are satisfied; and

storing the downloaded digital media assets on said set top box for subsequent viewing on a television or other display device.

48 – 106 (Cancelled).

EVIDENCE APPENDIX

None.

RELATED PROCEEDING APPENDIX

None.